

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.8627 of 2014

Md. Shahimul Islam Dalim

.....convict-Appellant

-Versus-

The State and another

..... Respondents

No one appears

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

.....For the State

Mr. Md. Dilower Mostafa Chowdhury, Advocate

.....For the complainant-respondent No.2

Heard on 15.11.2023 and

Judgment on: 16.11.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 10.09.2014 passed by the learned Jannoirapotta Bignakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi, in Sessions Case No.310 of 2011 arising out of C.R. Case No.1020C of 2010 convicting the appellant under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer rigorous imprisonment for a period of 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) in default to suffer rigorous imprisonment for further period of 02(two) months.

The prosecution case, in short is that one Md. Monirul Islam, son of late Sayed Ali of Kakaiel Kati, Post Office-Choumuhani Police Station-Motihar, District-Rajshahi as complainant filed a petition of complaint on 27.09.2010 in the Court of Chief Metropolitan Magistrate, Rajshahi against the convict-appellant alleging inter alia that the convict-appellant has issued a cheque of Tk.5,00,000/- in favour of complainant on 25.07.2010 and the complainant deposited the said cheque to the Sonali Bank, Botihar Branch for encashment on 26.07.2010, which was dishonoured on the same date for insufficient fund. Thereafter, he served a legal notice to the convict-petitioner on 03.08.2010 and it was received by the appellant on 05.08.2010, but the convict-appellant did not make any payment of the amount in question. For this reason, the complainant filed an application under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Rajshahi and hence the case.

The learned Chief Metropolitan Magistrate, Rajshahi examined the complainant under section 200 of the Code of Criminal Procedure and took cognizance the offence under section 138 of the Negotiable Instruments Act, 1881 as C.R. Case No.1020C of 2010 and issued summons upon the convict-appellant. The convict-appellant voluntarily surrendered before the learned lower Court and was granted bail. Thereafter, this case was transferred to the Court of learned Sessions Judge, Rajshahi and thereafter the same was transferred to the learned Jannonirapotta Biggnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi for trial and disposal and

was renumbered as Sessions Case No.320 of 2011. Thereafter, the learned Jannonirapotta Bignnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi framed charge on 29.11.2012 against the convict-appellant under section 138 of the negotiable Instruments Act, 1881 and the charge did not possible to read over the convict-appellant for his absconsion.

At the time of trial the complainant produced 02(two) witnesses and the defence did not produce any witness to oppose the case. After closing the witnesses the convict-appellant was not examined under section 342 of the Code of Criminal Procedure due his absconation. The learned Jannonirapotta Bignnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi after conclusion of the trial found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section and sentenced to suffer rigorous imprisonment for 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) by his judgment and order of conviction and sentence dated 10.09.2014.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 10.09.2014 passed by the learned Jannonirapotta Bignnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi in Sessions Case No.310 of 2011 arising out of C.R. Case No.1020C of 2010, the convict-appellant preferred this Appeal, before this Hon'ble High Court Division.

No one appears for the convict-appellant to press this Appeal.

On the other hand, Mr. M. Mostafa Kamal, the learned Advocate appearing on behalf of the respondent No.2 submits that the convict-appellant has issued a cheque of Tk.5,00,000/- in favour of complainant on 25.07.2010 and the complainant deposited the said cheque to the Sonali Bank, Botihar Branch for encashment on 26.07.2010, which was dishonoured on the same date for insufficient fund. Thereafter, he served a legal notice to the convict-petitioner on 03.08.2010 and it was received by the appellant on 05.08.2010, but the convict-appellant did not make any payment of the amount in question. For this reason, the complainant filed an application under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Rajshahi. Thereafter, this case was transferred to the Session Judge Rajshahi and thereafter the same was transferred to the learned Court of learned Jannonirapotta Bignnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi for trial and disposal and was renumbered as Sessions Case No.320 of 2011. The learned Jannonirapotta Bignnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi after conclusion of the trial found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced to suffer rigorous imprisonment for 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) by his judgment and order of

conviction and sentence dated 10.09.2014 rightly. Therefore, he prays for dismissing the Appeal.

I have heard the submissions of the learned Advocate for the respondent No.2 and perused the materials on record.

Now, let us discuss the evidence of prosecution witness Abdul Mannan.

P.W.1 Abdul Mannan in his deposition supporting the complaint-petition stated that the convict-appellant has issued a cheque of Tk.5,00,000/- in favour of complainant on 25.07.2010 and the complainant deposited the said cheque to the Sonali Bank, Botihar Branch for encashment on 26.07.2010, which was dishonoured on the same date for insufficient fund. Thereafter, he served a legal notice to the convict-petitioner on 03.08.2010 and it was received by the appellant on 05.08.2010, but the convict-appellant did not make any payment of the amount in question. For this reason, the complainant filed an application under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Rajshahi. This witness proved the petition of complaint and his signature on it marked as Exhibit No.1,1/1 respectively and cheque is marked as Exhibit -2 , dishonoured slip as Exhibit – 3 , legal notice as Exhibit – 4, Postal Rashid as Exhibit- 5 & 6, A.D as Exhibit 7 & 8 respectively. PW 2 Bank manager stated that the cheque was placed before the Bank on 26.07.2010 and that was dishonoured on the same date for insufficient fund.

It appears from the record and the deposition of the P.W.1 that the convict-appellant has issued a cheque of

Tk.5,00,000/- in favour of complainant on 25.07.2010 and the complainant deposited the said cheque to the Sonali Bank, Botihar Branch for encashment on 26.07.2010, which was dishonoured on the same date for insufficient fund. Thereafter, he served a legal notice to the convict-petitioner on 03.08.2010 and it was received by the appellant on 05.08.2010, but the convict-appellant did not make any payment of the amount in question. For this reason, the complainant filed an application under section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Metropolitan Magistrate, Rajshahi. Thereafter, this case was transferred to the Court of learned Jannonirapotta Biggnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi for trial and disposal and was renumbered as Sessions Case No.320 of 2011. The learned Jannonirapotta Biggnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi after conclusion of the trial found the convict-appellant guilty under section 138 of the Negotiable Instruments Act, 1881 and convicting the appellant under the said section sentenced to suffer rigorous imprisonment for 06(six) months and also to pay a fine of Tk.5,00,000/- (five lac) by his judgment and order of conviction and sentence dated 10.09.2014 rightly.

Considering the above facts and circumstances and materials on record, it is my view that the prosecution is able enough to establish the case and thus succeeded in proving it beyond all reasonable doubts. Therefore, the learned Jannonirapotta Biggnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi passed the judgment and

order of conviction and sentence dated 10.09.2014 in Sessions Case No.310 of 2011 rightly, which is maintainable in the eye of law and there is no chance to interference with the said judgment and order of conviction and sentence.

Accordingly, the appeal, therefore, has no merit.

In the result, the Criminal Appeal No.8627 of 2014 is dismissed.

The judgment and order of conviction and sentence dated 10.09.2014 passed by the learned Jannonirapotta Bignnakari Oparad Daman Tribunal and Special Sessions Judge, 2nd Court, Rajshahi in Sessions Case No.310 of 2011 is hereby confirmed and upheld.

The concerned lower Court is hereby directed to take necessary steps to give the deposited Tk.2,50,000/-, which has been deposited by the convict-appellant through Chalan at the time of filing appeal to the complainant-respondent No.2 (if he did not take the said amount).

The order of bail granted earlier by this Court is hereby cancelled and recalled.

The convict-appellant is hereby directed to surrender before the concerned lower Court within in 30(thirty) days from the date of receipt of this judgment and order, failing which the concerned lower Court is hereby directed to take necessary steps to secure arrest him.

Send down the lower Court records with a copy of the judgment and order to the concerned Court below at once.

Md. Anamu Hoque Parvej
Bench Officer